No. 20276

In the United States Court of Appeals for the Ninth Circuit

PACIFIC ELECTRICORD COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition for Review and to Set Aside, and on Cross-Petition for Enforcement of an Order of the National Labor Relations Board

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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INDEX

AUTHORITIES CITED

Cases:

Cases—Continued

Statute:

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COUNTERSTATEMENT OF THE CASE

This case is before the Court upon a petition for review and to set aside an order of the National Labor Relations Board, issued against petitioner on June 25, 1965, following proceedings under Section 10(c) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, *et seq.*). In its answer, the Board requests enforcement of its order. The Board's decision and order

(R. 27-30) are reported at 153 NLRB No. 37.[1] This Court has jurisdiction of the proceedings under Section 10(e) and (f) of the Act, the unfair labor practices having occurred at Gardena, California where petitioner is engaged in the manufacture of electrical products. No jurisdictional issue is presented.

I. The Board's findings of fact

Briefly, the Board found, in agreement with the Trial Examiner, that the Company violated Sections 8(a)(2) and (1) of the Act by dominating the Employee Committee and by assisting it with direct financial support and by announcing, immediately before an election between the IBEW[2] and the Employee Committee, that the Company was granting a 5¢ an hour wage increase pursuant to the Committee's persistent requests. The Board also found that the Company violated Section 8(a)(1) by singling out the IBEW organizers in the plant and warning them of possible disciplinary action for violation of the company rules. Finally, the Board found that employee Kaguk had been fired for engaging in protected concerted activities, in violation of Section 8(a)(1).

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[1] References to the pleadings, the decision and order of the Board, and other papers, reproduced as "Volume I, Pleadings," are designated "R." References to portions of the stenographic transcript reproduced pursuant to Court Rules 10 and 17 are designated "Tr." "G.C.X" and "R.X" denote General Counsel's and Respondent's exhibits, respectively. References preceding a semicolon are to the Board's findings; succeeding references are to the supporting evidence.

[2] International Brotherhood of Electrical Workers.

The evidence on which these findings are based is summarized below.

A. *Company domination of and assistance to the Employee Committee*

The Employee Committee was formed in 1956 and consists of five members who are elected for one-year terms by all the factory non-supervisory employees (R. 17; Tr. 8). Both the nominations and the actual run-off elections are held at the plant on company time (R. 17; Tr. 22-24, GCX 4). The ballots are prepared by company office workers, on company time, using company supplies and equipment (R. 17; Tr. 22-24). The personnel manager and his assistants distribute these ballots to each of the eligible employees. Both the meetings between the Committee and the Company as well as internal Committee meetings are held on company time at the plant (R. 17; Tr. 14-15, 26-27). The minutes of the joint meetings are typed by office personnel, again using company facilities and supplies, and are mailed to each employee at company expense (R. 17; Tr. 12-13). The Committee does not collect any dues and has never held a general meeting of all the employees since its inception (R. 17; 52-53). In late 1963, when the Committee decided to print the bylaws which then existed only in the memory of some management and Committee members, the employees, although asked to donate money to cover the expenses involved, did not contribute enough (R. 18; Tr. 16, 56-58). The additional amount was obtained from a fund consisting of the profits derived from the vending machines,

which the Company permitted to be located throughout the plant (R. 18; Tr. 90-91). The bylaws were then printed although they were never submitted to all the employees for a vote of approval (R. 18; Tr. 59-60). When a vacancy occurred on the Committee due to the discharge of member Kaguk, Vice-President Hamel prepared a written statement without consulting the Committee, naming Kaguk's successor (R. 17; GCX 4 "I" p. 6). This statement was mimeographed and distributed to all the employees at Company expense (R. 17).

Sometime in May 1963, the Committee requested a wage increase (R. 17). On October 8, Company President Schott met with all the employees and explained why the Company could not grant a wage increase immediately (R. 17; Tr. 45-46). He promised them a general wage increase as soon as the profits reached 5 percent or, in any event, by February 1, 1964 (R. 17; Tr. 45-46). In November 1963, the IBEW filed a petition with the Board seeking certification as the bargaining representative of the Company's employees (R. 18). On December 5, a consent election agreement was executed, scheduling the election between the Committee and the IBEW for December 12 (R. 18). On December 9, President Schott learned that profits for October had exceeded 5 percent but the Company decided that no wage announcement should be made because of the pending election (R. 18; Tr. 310-311). However, the next day, the Company held a special meeting of all of its employees which lasted 5 hours (R. 18; 313). At this meeting, in answer to a question by an employee about when

they could expect a wage raise, President Schott emphasized how the Committee had persistently attempted to obtain a wage increase for the employees and revealed that he would raise wages by 5¢ an hour beginning January 1, no matter how the election between the Committee and the IBEW came out (R. 18; Tr. 34-35, GCX 8). Two days later the employees voted 65 to 43, with 17 challenged ballots, to retain the Committee as their bargaining representative. The IBEW filed timely objections to the election and the Regional Director set aside the election and withdrew his approval of the Agreement for Consent Election.

B. *The company warning to members of the IBEW organizing committee*

On September 6, as a result of employee Richard Kaguk's request, he and several other employees met with IBEW representatives (R. 20; Tr. 95-96). Subsequently, Kaguk and the other employees sought to obtain employee signatures to IBEW designation cards and prominently displayed these cards in their shirt pockets (R. 20; Tr. 96-97). On September 26, the IBEW notified the Company by letter that five named employees were members of the IBEW organizing committee in the plant (R. 21; Tr. 33-34, GCX 7). Upon receiving this letter, the Company immediately warned these individuals in writing over President Schott's signature:

> Please be certain that you comply with all Company rules and regulations; otherwise you will be subject to disciplinary action.

(R. 21; Tr. 33-34, GCX 7). None of the other approximately 200 employees in the plant received such a warning (R. 21; Tr. 34).

C. *The discharge of Employee Committee member Richard Kaguk*

Richard Kaguk was hired on February 22, 1963, as a worker in the G & L department [3] (Tr. 95). He was a satisfactory employee. His starting hourly rate was $1.45 and within 2 months after being hired he received a 5¢ an hour increase (R. 19; Tr. 115-116). His hourly rate was increased by 5 more cents on May 27, and by 10¢ a little more than a month before he was fired (R. 19; Tr. 115-116).

In the summer of 1963, the Company changed its work standards and incentive program in several departments of its plant, causing the workers' earnings to drop sharply. Company practice had been to pay the employee a bonus for producing more than the set hourly piece rate as an incentive for greater production (R. 19; Tr. 103). For example, if the rate were 10 pieces an hour, and the employee produced 20, he received an extra hour's pay (Tr. 103-104). The changes in the plan raised the standard number of pieces per hour, making it harder to get a bonus (R. 19; Tr. 105). William Cadie, an employee in the G & L department, testified that after the Company had changed the standard rate, his earnings had fallen by 35 to 40 percent and sometimes he was not even able to make the basic standard at all (Tr. 149-150).

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[3] The name comes from the type of machinery used in the department.

Jesus Zapata, another employee in the G & L department, testified that his wages dropped 50 percent and the new standard caused Kaguk's earnings to decrease by about 40 percent (Tr. 197). Kaguk testified that he, too, could not even make the basic standard as frequently as he had been able to prior to the change in quotas (Tr. 105-106).

There was widespread employee dissatisfaction with the higher standards. Zapata protested about the new rates in the G & L department to Plant Manager Henry Clark (Tr. 197). Zapata asked him when he was going to correct the standards and Clark replied, "Jesse, don't worry about it. I been working on the standards" (Tr. 198). Zapata persisted by asking, "How long you been working on the standards, for how much time you going to need?" and when Clark replied that he was trying to fix them, Zapata added that the standards were wrong and if Clark couldn't fix them, the employees would do something about them (Tr. 198-200).

On August 22, the Employee Committee met with management and told them that the work standards for coiling were "still pretty tight" (GCX 9(a)). The Committee also brought up the employees' complaints that "many new jobs and some old jobs were coming out with impossible standards," the packing and inspection area standards were causing a "great many problems," there was a "standard problem on the preassembly and molding" and the changed work quotas in the G & L department were unfair (GCX 9(a)). The company representatives replied that the standards in both the coiling and G & L departments

were accurate and fair, and the other work quota problems would be dealt with as soon as possible (GCX 9(a)).

Soon after the standards had been changed in the G & L department, employees Kaguk and Cadie together protested several times to various management officials, including Plant Manager Eggert and Time Standards Engineer Mallrich (Tr. 107-108, 118-120, 161). Kaguk repeatedly told them that the standards were wrong and requested to see the construction sheets [4] upon which the standards were based, contending that "the employees were entitled to see [them]" (Tr. 121-122). Kaguk testified that in spite of his requests, the Company never offered to take "the standard apart and [show] us why it was set up the way it was . . ." (Tr. 122-123).[5]

On August 28, after one month of protesting as an ordinary employee, Kaguk ran for, and was elected to, membership on the Employee Committee in order to have "standing to talk to the Company about the G & L department" (R. 19; Tr. 125). On September 3, the Committee met with representatives of management in President Schott's office (R. 19; Tr. 100-101). During this meeting, which lasted about 5

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[4] The construction sheets showed how many seconds it took to perform each step of an operation (Tr. 122).

[5] The Company however, hired an outside firm of industrial engineers to check the new standards; this firm concluded that the rates were fair and recommended that they be continued (Tr. 119). Kaguk met with these engineers, complained about the standards and although they showed him a construction sheet, they never explained it to him (Tr. 119).

hours, Kaguk sought to discuss the issue of the new work quotas in the G & L department (R. 19; Tr. 101-102). Louise Wallace, the Chairman of the Employee Committee, then read to the company personnel a letter signed by employees Kaguk and Cadie expressing the employees' "feelings about a problem which has been argued back and forth between the employees and the management for approximately the last six weeks," namely, the revised work quotas and standards (R. 19; Tr. 103, R.X. 4). The letter stated that the employees in the G & L department felt that the Company had treated them unfairly, and were dissatisfied with their loss of earnings and the explanations given them by management personnel (R. 19; Tr. 103, RX 4). The employees felt that the Company had evasively answered their questions and kept them "in the dark" while time studies of their jobs were being made, and then had put into effect too high standards and refused to compromise on them despite several meetings between management and the employees (Tr. 103, RX 4). Kaguk testified that the letter was "a request, actually, to compromise which [the Company] hadn't wanted to do" (Tr. 103). President Schott replied that the Company would try to determine if the quotas were wrong "or if the operation was being done incorrectly" (GCX 9(b)). The Committee then raised the issue of high work quotas in other departments throughout the plant and it was agreed that "all packing and inspection standards will be rechecked . . . in approximately two weeks" (GCX 9(b)).

Two days after this meeting with the Company, Kaguk contacted representatives of the IBEW (R. 20; Tr. 95-96). On September 6, he and several other employees, including William Cadie of the G & L department, met with the IBEW organizers and discussed the issue of the new time standards (Tr. 129-130). Kaguk and several other employees agreed to distribute authorization cards and solicit employee support for the IBEW (R. 20; 96-98).

On September 15, Time Standards Engineer Mallrich approached Kaguk at his work station in the G & L department and told him that he was going to run a time study of Kaguk's work to see if the new quotas were accurate (R. 19; Tr. 110-111). Kaguk agreed but requested that Mallrich show him the construction sheet so that he could perform each step of the operation according to the sheet while Mallrich timed him to see if each step could in fact be done in the time alloted (R. 19; Tr. 110, 126). Mallrich told him that "it wasn't necessary for [him] to have a construction sheet" and all Kaguk had to do was to "sit down and do the job the best way [he] could and if [he] did anything wrong, [Mallrich] would let [him] know" (Tr. 110). Kaguk refused to demonstrate his working techniques because he was afraid that the Company might again change the quotas to his disadvantage (Tr. 110-111). In the course of the argument that followed, Kaguk told Mallrich that if the IBEW successfully organized the plant, management "would be forced to compromise with [the employees] a little bit instead of fighting [them] all the time" (Tr. 110).

On September 19, employee William Cadie was having difficulty with the machine he was working on (R. 19-20; Tr. 159). His supervisor, Daniel Kolat, came over and at first told him how to adjust the machine but then changed his mind and told Cadie to do rework jobs instead (Tr. 109, 166-167). The work Cadie had been doing had a bonus incentive if he managed to do better than the standard rate, while the rework Kolat had assigned him to did not (Tr. 167). Cadie complained to Kaguk who was working a few feet away that "they was (sic) going to put me on rework when there was standard work to be done . . . ." (Tr. 159, 168). Kaguk then spoke to Supervisor Kolat about Cadie's job assignment and Kolat told him to go back to work (R. 19-20; Tr. 126, 168). Following a "heated argument", Kolat and Assistant Plant Manager Clark reported the incident to Vice-President Hamel (Tr. 327). Hamel decided to issue a written warning to Kaguk and to suspend him for 5 days, and he sent Kaguk a telegram on the afternoon of September 19 notifying him of the disciplinary layoff (R. 20; Tr. 327-328, GCX 17). On September 20, Kaguk went to the plant to pick up a sweater he had left there the day before and to talk to President Schott about his layoff, if the opportunity arose (R. 20; Tr. 112-113). The starting time in the G & L department is 7:30 a.m., and at about 7:20 Kaguk met Cadie in the Company parking lot and the two went into the plant together (R. 20; Tr. 113). Cadie punched in, went immediately to the G & L department and turned on his machine to get it warmed up, a process which takes

around 20 minutes (R. 20; Tr. 151-152). While Cadie prepared the material he was going to mold when his machine was ready, Kaguk remained and talked with him (R. 20; Tr. 114, 152). Vice-President Hamel walked by and saw Kaguk there but said nothing to him (Tr. 114). At 7:30 the work bell rang, and only about 1 minute later, while Kaguk was sitting and talking with Cadie, Hamel returned, yanked Kaguk out off his chair and said, "Come with me. You're fired." (R. 20; Tr. 115, 152). When Kaguk asked why, Hamel said he had violated a Company rule forbidding any one except current employees from entering the plant without the permission of the plant manager (R. 20; Tr. 115). After waiting in the front office for more than an hour, Kaguk received his final check and termination notice (Tr. 115). Assistant Plant Manager Clark walked with him back to the G & L department "to prevent any further trouble" while he picked up his sweater, and then escorted him to the door of the plant (Tr. 115). The Company sent a letter to all the employees explaining that Kaguk had been fired for "repeated insubordination and violation of long-standing Company rules" (R. 20; Tr. 177-178, GCX 4).

II. The Board's Conclusions and Order

The Trial Examiner found that the Company violated Section 8(a)(2) and (1) of the Act by dominating and assisting the Employee Committee, and that it further violated Section 8(a)(1) by singling out those employees who were engaged in organizational work on behalf of the IBEW and warning them that

they might be disciplined for violating any plant rules. The Company filed no exceptions to these unfair labor practice determinations and the Board adopted them *pro forma*. The Board further found, contrary to the Examiner, that the Company violated Section 8(a)(1) of the Act by discharging employee Kaguk because he was engaged in protected concerted activities.[6]

The Board's order (R. 24-25, 29-30) directs the Company to cease and desist from the unfair labor practices found and from in any like or related manner interfering with, restraining or coercing its employees in the exercise of their statutory rights. Affirmatively, the Company is directed to withdraw and withhold recognition from the Employee Committee and to disestablish it, to reinstate Kaguk with backpay, and to post the appropriate notices.

ARGUMENT

I. The Board Properly Found That the Company Violated Section 8(a)(2) and (1) of the Act

Except with regard to the discharge of Kaguk (discussed *infra*, pp. 14-20), petitioner is precluded from now attacking the propriety of the Board's findings and conclusions herein. For, although the

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[6] In reversing the Trial Examiner on this point, the Board did not disturb his findings of fact but drew different conclusions from those facts. In these circumstances, the Trial Examiner's contrary conclusions are not entitled to special weight. *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 494, 496; *N.L.R.B.* v. *Texas Independent Oil Co.*, 232 F. 2d 447, 451 (C.A. 9).

Trial Examiner found that petitioner dominated and assisted the Employee Committee in violation of Section 8(a)(2) and (1) of the Act, and that it unlawfully singled out IBEW adherents for warnings regarding violations of plant rules, contrary to Section 8(a)(1), petitioner filed no exceptions thereto. Under settled law, petitioner is barred by the provisions of Section 10(e) of the Act from attacking those findings in this Court. *N.L.R.B.* v. *Ochoa Fertilizer Corp.*, 368 U.S. 318, 322; *N.L.R.B.* v. *Giustina Bros. Lumber Co.*, 253 F. 2d 371, 374 (C.A. 9); *N.L.R.B.* v. *Noroian*, 193 F. 2d 172, 173 (C.A. 9); *N.L.R.B.* v. *Mooney Aircraft, Inc.*, 310 F. 2d 565, 566 (C.A. 5); *Kovach* v. *N.L.R.B.*, 229 F. 2d 138, 143-144 (C.A. 7); *N.L.R.B.* v. *Community Motor Bus Co.*, 335 F. 2d 120, 120-121 (C.A. 4).[7]

II. Substantial Evidence on the Record as a Whole Supports the Board's Finding That the Company, in Violation of Section 8(a)(1) of the Act Fired Employee Richard Kaguk for Engaging in Protected Concerted Activities

The sole contested issue before the Court is whether substantial evidence on the record as a whole supports the Board's finding that Kaguk was fired for engaging in protected concerted activities.

Section 8(a)(1) of the Act prohibits employers from interfering with, restraining or coercing em-

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[7] Indeed, petitioner does not seek to attack these findings here. Thus, its brief to the Court deals only with the Board's finding that Kaguk's discharge was violative of the Act. And in its petition for review, petitioner specifically requests the Court to affirm the Trial Examiner's Decision which found these violations of Section 8(a)(2) and (1). (R. 32).

ployees in the exercise of their rights under Section 7 to engage in concerted activities for their mutual aid or protection. As the Company properly recognizes (br. p. 5), the activities of employees come within Section 7 if they are both of a protected and a concerted nature. See e.g., *N.L.R.B.* v. *Washington Aluminum Co.*, 370 U.S. 9, (employees fired for walking off the job to protest lack of heat in the plant); *N.L.R.B.* v. *Trumbull Asphalt Co.*, 327 F. 2d 841, 843 (C.A. 8), (employees fired for meeting with company officials to discuss working conditions); *N.L.R.B.* v. *Halsey W. Taylor Co.*, 342 F. 2d 406 (C.A. 6), (employees fired for complaining about a foreman taking work away from another employee, thus cutting down overtime pay); *Duo-Bed Corp.* v. *N.L.R.B.*, 337 F. 2d 850 (C.A. 10), cert. denied, 380 U.S. 912 (employee fired for instigating a petition for a wage increase); *I.L.G.W.U.* v. *N.L.R.B.*, 299 F. 2d 114 (C.A.D.C.), order after remand enforced *sub nom*, *Walls Mfg. Co.* v. *N.L.R.B.*, 321 F. 2d 753 (C.A.D.C.), cert. denied, 375 U.S. 923, (employee discharged for protesting unsanitary conditions of the restroom to the Texas State Health Dept.); *N.L.R.B.* v. *City Transportation Co.*, 303 F. 2d 299 (C.A. 5), cert. denied, 371 U.S. 920, (company fired employees to crush a movement by them to obtain relief from intolerable working conditions); *N.L.R.B.* v. *McCatron*, 216 F. 2d 212 (C.A. 9), cert. denied, 348 U.S. 943 (employees fired for striking to bring about the reinstatement of another employee whom the strikers mistakenly believed had been fired for union activity); *N.L.R.B.* v. *Globe Wireless, Ltd.*, 193 F. 2d

748 (C.A. 9), (employees fired for striking to protest another employee's discharge); *N.L.R.B.* v. *Phaostron Instrument & Electronic Co.*, 344 F. 2d 855, 858-859 (C.A. 9) (same); *Red Top Cab Co., et al.*, 145 NLRB 1433 (employee fired for protesting about favoritism in job assignments which adversely affected his earnings). Employee activities are "concerted" if the employees engage in some sort of group action or have discussions "with the object of initiating, or inducing or preparing for group action * * * in the interest of the employees." *Mushroom Transportation Co.* v. *N.L.R.B.*, 330 F. 2d 683, 685 (C.A. 3); accord, *N.L.R.B.* v. *Halsey W. Taylor Co., supra,* at pp. 407-408; *Duo-Bed Corp.* v. *N.L.R.B., supra,* at p. 851; *I.L.G.W.U.* v. *N.L.R.B.*, 299 F. 2d 114, 115-116 (C.A. D.C.), order after remand enforced *sub nom. Walls Mfg. Co.* v. *N.L.R.B.*, 321 F. 2d 753 (C.A. D.C.), cert. denied, 375 U.S. 923.

We submit that the record provides ample support for the Board's finding that Kaguk engaged in concerted protected activities, persistently complaining on behalf of the employees in the G & L department about the new production standards, until he was fired by the Company for these very activities.

Kaguk was first hired in February 1963 and was a satisfactory employee. Only after the Company changed the work production standards did Kaguk become "troublesome" from the Company's point of view. As a result of the new standards, Kaguk and his fellow employees in the G & L department suffered a 35-50 percent loss of earnings, which naturally pro-

voked widespread employee dissatisfaction. For a period of about 6 weeks, Kaguk complained, sometimes by himself and sometimes with fellow employee Cadie, to the Plant Manager and the Time Standards Engineer, claiming that the standards in the G & L department were wrong and "that the employees were entitled to see the construction sheets" (R. 19; Tr. 122).[8] The Company refused to justify the new standards or to show the employees the construction sheets on which they were based, and instead insisted that the quotas were fair and accurate. After 6 weeks of futile protests as an ordinary employee, Kaguk ran for membership on the Employee Committee in order "to have standing to talk to the Company about the G & L Department." (R. 19; Tr. 125). At the very first meeting held after his election, Kaguk introduced a motion to discuss the new standards in the G & L department, complaining that the standard had been raised so much that the employees could not make their bonuses any more (Tr. 101-102, GCX 9(b)). The Chairman of the Employee Committee read a letter written to the Company by

[8] Even if the standards were correct and the Company had no duty to justify the standards to the employees, Kaguk's protests about the high production quotas are still concerted protected activity within the meaning of Section 7. This Court has held that the mistaken beliefs of employees do not remove their activities from the protection of Section 7. *N.L.R.B.* v. *McCatron*, 216 F. 2d 212, 215 (C.A. 9), cert. denied, 348 U.S. 943, (employees fired for striking to bring about the reinstatement of another employee whom the strikers mistakenly believed had been fired for Union activity). And see *N.L.R.B.* v. *Phaostron Instrument & Electronic Co.*, 344 F. 2d 855, 859 (C.A. 9).

Kaguk and a fellow employee in the G & L department, protesting the unfair production quotas, the manner in which they had been arrived at and the refusal of the Company to compromise in any way with the employees about this issue. Petitioner contends (br. pp. 9-10) that the letter referred solely to Kaguk's own standards. Yet, the text of the letter, signed by Kaguk and Cadie,[9] clearly shows that they were speaking for the employees in the G & L department, and that the issue of standards had been "argued back and forth between the employees and the management for approximately the last six weeks." (R.X. 4). After failing to obtain any compromise or satisfaction from President Schott at the meeting, Kaguk decided to try to force the Company to change its stand on the high quotas by seeking support from an outside union. Within 2 days of this unsatisfactory meeting with the Company, Kaguk personally contacted a representative of the IBEW and arranged for a meeting between a union organizer and several employees (R. 20; Tr. 95-96). The employees' major purpose in attending this meeting was to do something about the unfair standards and Kaguk and his fellow workers discussed this very problem with the IBEW representative (R. 20; Tr. 96-98). Several days later, Kaguk had an argument with Time Standards Engineer Mallrich about the Company's refusal to show the employees the con-

[9] That the writing of this letter by Kaguk and Cadie constituted a protected concerted activity is, we submit, too clear to require extended discussion, as petitioner itself apparently concedes (br. p. 15).

struction sheets on which the new rates was based. Kaguk told Mallrich that when the Union came in, the Company might be more willing to compromise on the new standards (Tr. 110). A few days later, Kaguk received a 5-day disciplinary layoff for arguing with a supervisor about another employee's work assignment to non-bonus work although bonus work was available.

Although the Company contended at the hearing that Kaguk had been fired for violating a company rule prohibiting nonactive employees from visiting the plant during working hours (R. 20),[10] petitioner now argues that Kaguk was really fired because of his constant complaints and his contentious attitude. (Co. brief, pp. 14-15). Yet the above evidence conclusively shows that Kaguk, in engaging in these activities, was acting in behalf of, and speaking for, the employees of the G & L department and not for himself alone. The Company apparently admits that the issue of the new work rates was an inflammatory one which caused widespread employee dissatisfaction. Kaguk complained to management, giving expression to this dissatisfaction in terms of employee

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[10] Petitioner has apparently abandoned this argument, which the Examiner properly rejected (R. 20). Thus, although the Employees' Manual contains a rule prohibiting persons not actively employed from visiting the plant premises without the plant manager's permission, both Kaguk and another employee testified that they had never heard of this rule or its enforcement (R. 20; Tr. 115, 178-179), and the record shows that the rule had not been enforced against other employees who—some with their families—visited the plant during working hours (Tr. 137, 179-180).

rights and demands. Thus, for example, he claimed "that the employees were entitled to see the construction sheets" (R. 19; Tr. 122); that "the employees and management" had argued about the standards for about 6 weeks (R.X. 4); that the Company never offered to take "the standard apart and [show] us why it was set up the way it was . . ." (Tr. 122-123); and that the Company "didn't want to compromise with us." (Tr. 103.) Moreover, Kaguk complained to management about the standards, in concert with another employee, and it was Kaguk who arranged for other employees to meet with an IBEW representative to see what could be done about the unfair rates. Applying the well-established principles of law cited above to the facts of this case, ". . . it is clear that Section 7 protects his right to utter [his grievance] as a matter of concerted activity with other employees for mutual aid," (*N.L.R.B.* v. *Halsey W. Taylor Co.*, 342 F. 2d 406, 408 (C.A. 6)) and the Company violated Section 8(a)(1) by firing him for engaging in such activity.

CONCLUSION

For the reasons stated above, we respectfully submit that the petition for review should be denied and that a decree should issue enforcing the Board's order in full.

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National Labor Relations Board.

January 1966.

CERTIFICATE

The undersigned certifies that he has examined the provisions of Rules 18 and 19 of this Court and in his opinion the tendered brief conforms to all requirements.

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APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Unfair Labor Practices

Sec. 8(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

* * * *

(e) The Board shall have power to petition any court of appeals of the United States, . . . within any circuit . . . wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing,

modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record . . . . Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the . . . Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board,

and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

* * * *

APPENDIX B

Pursuant to Rule 18(f) of the Rules of the Court.

GENERAL COUNSEL'S EXHIBITS

No.	Identified	Offered	Rec'd in Evidence
4 "I"	21	40	40
7	33	34	34
8	34	35	35
9-a	36	36	36
9-b	36	36	36
9-c	36	36	36
17	112	112	112

RESPONDENT'S EXHIBITS

3-Rule J	322	331	332
4	339	340	340

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